

# CROW INDIAN TRIBE



## Resources Report

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## **RESERVATION REGULATORY FRAMEWORK**

### **Introduction**

Under federal law, the jurisdiction of the Crow Tribe extends to certain activities of tribal members and non-Indians within the reservation boundaries. Indian tribes retain “attributes of sovereignty over both their members and their territory,” *United States v. Mazurie*, 419 U.S. 544. 557 (1975). While the federal courts have in some cases found divestiture of a tribe’s jurisdiction over non-Indian activity within reservation boundaries, none of those limitations will significantly affect the authority of the Tribe and its Tribal Court on the Crow Indian Reservation.

### **Jurisdictional Territory**

The Jurisdiction of the Crow Tribal General Council shall extend to all lands within the exterior boundaries of the Crow Indian Reservation. This includes those lands within the original boundaries of the Crow Indian Reservation, as determined by federal statutes and case law, and to such other lands as may hereafter be acquired by or for the Crow Tribe of Indians (Crow Constitution).

### **Civil Jurisdiction**

The Crow Tribal Court has civil jurisdiction over all persons who reside, enter, and/or transact business within the exterior boundaries of the Crow Indian Reservation. The Tribal Court also has subject matter jurisdiction over all civil causes of action to the fullest extent authorized under tribal and federal law.

The Supreme Court has specifically recognized the broad scope of tribal court jurisdiction over civil causes of action arising within a reservation and has determined that civil jurisdiction lies presumptively in the tribal court unless affirmatively limited by specific treaty provision or federal statute, *Iowa Mutual Insurance Co. v. LaPlante*, 480 U.S. 9(1987).

Limitations of tribal court civil jurisdiction over non-Indians have generally focused on non-Indian activity of fee lands. Although the Crow Indian Reservation contains considerable fee lands within its borders, it is well established that the Tribe may regulate non-Indian activities on fee lands ‘when the conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe,’ *Montana v. United States*, 450 U.S. 544. 566 (1981).

### **Tribal Laws and Codes**

Tribal law is codified in the Crow Law and Order Code and changes to the Law and Order Code may occur by the adoption of new laws or revisions of existing laws by the Legislative Branch. In addition to the Law and Order Code, tribal ordinances, regulations and resolutions provide on-reservation governance.

The Crow Tribal Legislature’s actions shall be codified in the Crow Legislative Record with inclusion of laws into the Crow Law and Order Code when appropriate. All laws of the Crow Tribe must comply with applicable federal law. Currently (April 2002), the Crow Tribe has the following codified laws, ordinances and regulations among others:

- Crow Law and Order Code
  - Canons of Ethics
  - Probate Code
  - Establishment of Tribal Courts
  - Law Enforcement Services
  - Rules of Civil Procedure
  - Rules of Criminal Procedure
  - Rules of Appellate Procedure
  - Crow Criminal Code
  - Juvenile Code
  - Domestic Relations Code
  - Fish and Game Code
  - Traffic Code
- Election Ordinance
- Land Use Regulations
- Gaming Code
- Severance Tax Code

## **Environmental Jurisdiction and Permitting**

The Crow Constitution empowers the Executive Branch of the Crow Tribal Government to:

“Negotiate and approve or prevent any sale, disposition, lease or encumbrance of tribal lands, interests in lands or other tribal assets, including buffalo, minerals, gas and oil with final approval granted by the Legislative Branch.”

The Executive Branch has created the Natural Resources Division to oversee tribal natural resources including minerals, oil and gas, water, timber resources, tribal lands and buffalo. The Natural Resources Division also oversees environmental regulation and protection efforts on the Crow Reservation. Tribal natural resource management will occur in accordance with federal regulations or regulations adopted by the Crow Legislature. The Natural Resource Division, in conjunction with the elected officials, will undertake all mineral, oil and gas development negotiations and submit final agreements for development to the Crow Tribal Legislature for final approval. The role of the Legislature is to ratify the negotiated agreement only.

The Crow Tribe asserts exclusive jurisdiction over all mineral development within the exterior boundaries of the Crow Reservation. The Tribe has unquestioned authority over all trust minerals and tribally owned fee minerals. Further, the Tribe asserts jurisdiction over all development activities on non-tribal fee lands that threatens, or has some direct effect on the political integrity, the economic security, or the health or welfare of the Tribe, in accordance with Montana v. United States, 450 U.S. 544. The Crow Tribe intends to coordinate with state and federal agencies including the Bureau of Land Management, Office of Surface Mining (OSM), Bureau of Indian Affairs and Environmental Protection Agency (EPA), to reach agreement on regulatory issues concerning non-Indian owned fee land.

## **Tribal Environmental Laws**

Tribes may establish codes and set standards for regulating activities that affect tribal environments and resources either under federal statutes or under inherent tribal authority. It is the responsibility of any entity conducting business within tribal jurisdiction to abide by all tribal laws in place.

The Crow Tribe currently (April 2002) does not have any specific environmental laws or codes in place.

The Tribe has developed:

- Draft Water Quality Standards – anticipated to be in place by March 2003
- Draft Air Quality Standards – anticipated to be in place by 2005

All development and actions will be subject to these requirements after they are officially enacted.

The Indian Health Service (IHS) has enacted – Environmental Health and Sanitation Codes for the Reservation. The Tribe has adopted these codes Reservation wide. Other Tribal Codes and Ordinances related to minerals and development on the reservation are:

- Coal Exploration and Mining Ordinance 1998
- Land Use Zoning Ordinance 1995
- Crow Tribe Uniform Commercial Code 1998
- Tribal Employment Rights Ordinance (TERO) 1979

## **Bureau of Indian Affairs**

As detailed in Chapter 3, Indian Trust Assets section of the Statewide Draft Oil and Gas EIS, BIA, BLM, OSM and MMS have trust responsibility for protection of Indian Trust Assets held for the Crow Tribe and individual Indian land and mineral owners (allotted lands).

Any permitting for development, exploration, mineral leasing, and right-of-way authorization on tribal or allotted lands will be subject to 25 CFR regulations enforced through BIA and BLM procedures. Listed below are several regulations that are pertinent to mineral development in Indian Country:

- 25 CFR Part 162 - Leases and Permits.
- 25CFR Part 169 – Right-of Ways over Indian Lands. Key sections of interest follow:
  - 169.3 – Consent of Landowners to grants of ROW
  - 169.5 – Application for ROW
  - 169.21 – Condemnation Actions involving individually owned lands
  - 169.22 – Service Lines
  - 169.25 – Oil and Gas Pipelines
  - 169.27 – Power Projects
  - 25 CFR Part 211 – Leasing of Tribal Lands for Mineral Development
  - 25 CFR Part 212 – Leasing of Allotted Lands for Mineral Development
  - 25 CFR Part 216 – Surface Exploration, Mining, and Reclamation of Lands

BIA Indian Affairs Manual (IAM) 30 – Sets out requirements for environmental assessments and environmental impact statements. All requirements and acts referenced in this document will apply to any regulated development within the reservation boundaries.

BIA IAM 59 – Sets out environmental management policy, requirements and responsibilities.

### **Environmental Protection Agency**

The following interpretation comes from the Environmental Protection Agency, American Indian Environmental Office (<http://www.epa.gov/indian/r8pol.htm>).

#### Background

*The 1984 EPA Indian Policy states clearly that EPA recognizes tribal governments as the ". . . primary parties for setting standards, making environmental policy decisions and managing programs for reservations consistent with Agency standards and regulations. The Agency will assist interested tribal governments in developing programs and in preparing to assume regulatory and program management responsibilities for reservation lands. Until tribal governments are willing and able to assume full responsibility for delegable programs, the Agency will retain responsibility for managing programs for reservations."*

In accordance with the EPA's national policy, Region 8 supports tribal government assumption and management of environmental programs for Indian Country, to the maximum extent permitted by law. Until such programs are in place, Region 8 retains responsibility for direct implementation of environmental programs for Indian Country in the region.

Most of the programs for which Region 8 is responsible are regulatory programs requiring enforcement of environmental standards and rules. Accordingly, jurisdiction is an important factor in policies and decisions relating to the assumption and management of regulatory programs in Indian Country.

Jurisdiction in Indian Country is a matter of federal law, based upon the U.S. Constitution, treaties, statutes and decisions of the federal courts.

Region 8 generally does not give "advisory" opinions on state and tribal jurisdiction. To date, Region 8 has given opinions on state and tribal jurisdiction only when faced with a federal decision, such as a "Treatment in the same manner as a State" application or request for program approval, that requires a prior determination of jurisdiction. In such cases, Region 8 has based its decision upon its understanding of the relevant statutes and principles of Federal Indian Law. The Agency has, in appropriate cases, consulted with legal experts in the Department of Interior and the Department of Justice, and the Agency has had the benefit of the views of states, tribes and other interested parties as part of a public record.

#### Principles

- The federal government has broad jurisdiction over pollution sources throughout the United States, including Indian Country.

- EPA presumes that, in general, tribes are likely to possess the authority to regulate activities which are regulated by EPA statutes and which affect resources on the reservation.
- States applying to administer federal environmental programs within Indian reservations must adequately demonstrate their jurisdiction to do so. Through a transition process initiated by this Policy, Region 8 will begin to issue federal permits under the priorities set forth in this Policy.

#### Direct Federal Implementation of Programs

Region 8 is responsible for direct implementation of environmental programs for Indian Country in the region until tribal governments are formally authorized to implement programs, consistent with (1) the criteria set forth in EPA statutes and regulations; (2) the principle, reflected in the 1984 EPA Indian Policy, that tribal governments are the appropriate non-federal parties for making decisions and carrying out program responsibilities affecting Indian reservations, their environments, and the health and welfare of the reservation populace; and (3) the objective reflected in the 1991 EPA/State/Tribal Concept Paper, of providing for coherent and consistent environmental regulation on reservations and preventing checkerboarding.

#### Enforcement

Region 8 has primary enforcement authority and responsibility until primacy is formally granted to a tribal government that has demonstrated adequate jurisdiction over Indian Country. Region 8 will strive to ensure compliance with environmental statutes and regulations in Indian Country as set forth in the 1984 Indian Policy, which states:

*In those cases where facilities owned or managed by tribal governments are not in compliance with federal environmental statutes, EPA will work cooperatively with tribal leadership to develop means to achieve compliance, providing training, technical support and consultation as necessary to enable tribal facilities to comply. Because of the distinct status of Indian tribes and the complex legal issues involved, direct EPA action through the judicial or administrative process will be considered where the Agency determines, in its judgment, that: (1) a significant threat to human health or the environment exists, (2) such action would reasonably be expected to achieve effective results in a timely manner, and (3) the federal government cannot utilize other alternatives to correct the problem in a timely fashion.*

In those cases where facilities in Indian Country are clearly owned or managed by private parties and there is no substantial tribal interest or control involved, the Agency will endeavor to act in cooperation with the affected tribal government, but will otherwise respond to noncompliance by private parties in Indian Country as the Agency would to noncompliance by the private sector elsewhere in the country. Where the Tribe has a substantial proprietary interest in, or control over, the privately owned or managed facility, Region 8 will respond as described in the paragraph above.

### Permitting

Region 8 is responsible for issuing permits in Indian Country until a tribal permitting program expressly applying to Indian Country is formally authorized. Region 8 will carry out this process in a prioritized manner, beginning with (1) facilities that must be but are not now permitted, emphasizing those that pose the greatest threat to public health or the environment; (2) facilities that are now permitted by a state where the standards being enforced by the state are significantly less protective of public health or the environment than tribal or EPA standards applicable to such facilities, or are otherwise substantively inadequate; and (3) instances where the tribal government raises important considerations. Over time and after assessment by Region 8 of the initial implementation, EPA may add other criteria for prioritizing permit issuance. Region 8 will work with tribal governments and in consultation with affected states and permittees to compile and, as appropriate, revise a master list, by program, with a schedule for proposed issuance. EPA will ensure regular compliance inspections and appropriate enforcement of such permits.

### **Eminent Domain and Rights-of-Way**

The Crow Tribe's Constitution specifically provides the Executive Branch the enumerated power to obtain land for public purposes through purchase under condemnation proceedings in courts of competent jurisdiction. The condemnation proceeding must be conducted under an ordinance adopted and approved by the Legislative and Executive Branches. Further, condemnation proceedings must comply with the bill of rights protections enumerated in the Constitution.

#### Article IV, Section 3(i), Crow Constitution:

Although it is generally accepted that Indian Tribes retain the inherent governmental authority for condemnation of lands for public purpose, the Crow Tribe specifically enumerates such power to provide notice to the public and to require establishment of an ordinance to specify the process to allow the Tribe to obtain a condemnation order from a court. Historically, tribal development efforts were complicated by surface landowners who objected to the development due to concerns about just compensation or when multiple owners would not consent to the development. The Crow Tribe intends to utilize a fair and just condemnation process to allow development of the dominant mineral estate when such development serves the public good. Presently, mineral development on the Crow Reservation provides the best opportunity for the Crow Tribe to achieve a better standard of living for the Crow people.

Consents for rights-of-way across tribal trust lands will be negotiated by the Executive Branch, via the Land Use Office in conjunction with the Tribal Officials, the consent will be granted final ratification by the Legislature and forwarded to the BIA for the actual granting of the right-of-way. The Department of Interior, BIA, as holder of the title to the trust land actually grants the right-of-way after tribal consent. The Crow Constitution authorizes this process and allows for the development of regulations to govern the issuance of tribal consent for rights-of-way. Tribal regulations will supplement Code of Federal Regulations provisions regarding granting rights-of-way across tribal trust lands. Rights-of-way over tribal fee lands will be negotiated by the Executive Branch, ratified by the Legislative Branch and forwarded to Big Horn County for recording.

25 CFR 169.21 (Condemnation actions involving individually owned lands) details federal condemnation requirements for allotted lands.